

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PERRY DEWAYNE FALCONER,
#2214264,

Plaintiff,

V.

BRYAN COLLIER, et al.,

Defendants.

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Case No. 6:21-cv-502-JDK-KNM

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Perry Dewayne Falconer, a Texas Department of Criminal Justice inmate proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

On November 16, 2023, Judge Mitchell issued a Report and Recommendation recommending that the Court dismiss the pending claims in this case for various reasons. Docket No. 39. Specifically, Judge Mitchell recommended that Plaintiff's ADA, ADAAA, Rehab Act, and Eighth Amendment claims for declaratory and injunctive relief be denied as moot. She recommended that Plaintiff's constitutional claims against Defendants TDCJ and the Texas Board of Criminal Justice ("TBCJ") be dismissed without prejudice for lack of subject matter jurisdiction. Judge Mitchell further recommended that Plaintiff's claims against the individual Defendants for monetary damages in their official capacities be dismissed without prejudice for lack

of subject matter jurisdiction. Finally, Judge Mitchell recommended that the remainder of Plaintiff's constitutional claims against Defendants Collier, Lumpkin, Fitzpatrick, John Doe, Bowman, and the Powledge Unit Warden (FNU LNU), in their individual capacities, be dismissed for failure to state a claim and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b).

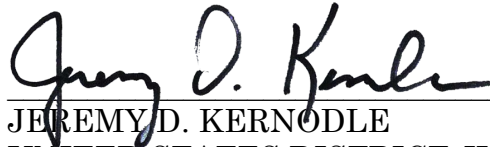
Plaintiff filed written objections. Docket No. 12.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Having conducted a de novo review of the record in this case and the Magistrate Judge's Report, the Court has determined that the Report of the Magistrate Judge is correct, and Plaintiff's objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 39) as the opinion of the District Court. It is therefore **ORDERED** that Plaintiff's ADA, ADAAA, Rehab Act, and Eighth Amendment claims for declaratory and injunctive relief are **DISMISSED** as **MOOT**. It is further **ORDERED** that Plaintiff's constitutional claims against Defendants TDCJ and TBCJ are **DISMISSED** without prejudice for lack of subject matter jurisdiction. Plaintiff's claims against the

individual Defendants in their official capacities for monetary damages also are **DISMISSED** without prejudice for lack of subject matter jurisdiction. It is finally **ORDERED** that Plaintiff's Eighth and Fourteenth Amendment claims against Defendants Collier, Lumpkin, Fitzpatrick, John Doe, Bowman, and the Powledge Unit Warden, in their individual capacities, are **DISMISSED** with prejudice for failure to state a claim and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b).

So **ORDERED** and **SIGNED** this **17th** day of **January, 2024**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE